

Testimony of Victor M. Mercado
Director, Detroit Water and Sewerage Department
to

The House Local Government and Urban Policy Committee
The Honorable John Stakoe, Chair

Chairman Stakoe and other honorable members of this House Committee:

Thank you for providing me with an opportunity to speak again to proposed legislation to regionalize the governance of the Detroit Water and Sewerage Department (DWSD). As I did before, I again come before you today to speak in opposition to this bill. **Senate Bill 372 is unnecessary, and in light of the very clearly reasoned Opinion and Order from federal judge John Feikens, it is of questionable legality in the face of the Michigan State Constitution.**

Any effort to move this Bill also **flies in the face of enormous progress made over the last several years in customer outreach and cooperation from my department to our 125 water and 76 wastewater suburban customer communities.**

Modeled on the successes of the suburban sewer outreach program started in 1995, the water partnering process and its successes were first noted in a June 2004 letter to the House Select Committee on the Detroit Water Board signed by suburban co-chairs from Flint, Pontiac, and the Southeastern Oakland County Water Authority. A copy is provided in your information packets.

This partnership, known as the Technical Advisory Committee, or TAC, is closely linked to mutual efforts with the Southeast Michigan Consortium for Water Quality, the Southeast Michigan Council of Governments and the Michigan Department of Environmental Quality.

The June 2004 letter spoke to the collaborative identification of common issues for system master planning, policy-making and rate formulation and the resulting exchange of information on these topics. It affirmed the commitment of DWSD and its customers to continuing the efforts.

I can report to you that in the past year we have invested considerable effort to establish a more complete and thorough understanding of the DWSD water rate methodology among our suburban customer communities. Through the partnering process we have investigated modifications to the way in which DWSD computes water rates, and are considering how to implement these modifications. I should note that any changes are the product of a collaborative dialogue with suburban customer communities. More importantly, they are being folded into the finalization of model water contract language that DWSD and our customers intend to begin implementing in 2007.

The department and its customers have already approved new sewer contract language for contract negotiation.

With our customers we continued the roll out of a clearly defined rate information process developed with the Consortium:

- In October we met with customers to discuss preliminary community demands on the water system, focusing on peaking factors. We also presented financial information for closeout of financial year 2004-05.
- In November we presented initial system revenue targets for rate year 2006-07 and individual community costs based upon the DWSD rate model.

- In December we presented preliminary rates for financial year 2006-07 for review. These are the rates approved by the Board of Water Commissioners on January 25, 2006.
- The various materials developed by DWSD to establish water and sewer rates have been posted on the Web site as they became available. Rate Reports summarizing individual customer rate proposals and narrative for rates computation were also published on the Web site.
- For anyone to now claim that the rate model is a mystery, that there is no guide to the process, is to ignore the wealth of information DWSD has made available to its suburban water and sewer customers and the general public.
- Based on the written feedback received after each of these meetings from suburban operations personnel and elected officials, the process has been a great success.

Regarding Judge Feikens' Opinion and Order, I want everyone to be fully aware of exactly what was stated in the Judge's decision, and not rely solely on published media reports. To that end, it has been posted on the department's Web site and our customers are directed to that reference. It has been disseminated to our Elected Officials Task Force, an important workgroup in the TAC partnering process.

Contrary to what some have claimed, the Judge spoke very highly of both Mayor Kilpatrick's role as Special Administrator and the department's leadership in establishing long-term compliance with the mandates of the Clean Water Act and in keeping rates low. To quote Judge Feikens, "Under Mayor Kwame M. Kilpatrick's special administratorship, DWSD's compliance has improved dramatically, such that the position of Special Administrator is not necessary at this time."

The real news is that a motion to place DWSD under a special administrative committee was denied as unnecessary.

The federal court also addressed the lack of proof to the claims of Oakland County that the Mayor had overstepped his authority relative to the award of three contracts frequently mentioned by those who choose to base their political agendas on newspaper headlines rather than facts.

The facts regarding each of the contract awards were addressed in a special report to the federal court. That report clearly indicated that no impropriety had taken place.

Over the last four years, an enormous amount of information has been shared with this and other legislative committees. I respectfully ask that you consider the information, particularly that presented to you today, and **allow DWSD and its customers to continue on the road of cooperation and progress for all water and sewer users in Southeast Michigan.**

Pursuing the governance proposals of Senate Bill 372 will only undermine the important accomplishments of our partnership efforts. **Rather than providing a regional solution, it will keep the flame of regional tensions alive, separating the city from the suburbs, dividing one county from another, turning neighboring communities against each other.**

The forum for regional success is not in the Legislature, nor in the courts, as Judge Feikens has so clearly said, but in continued cooperation by local governments. DWSD looks forward to continued regional dialogue on the issues that affect water and sewer service in Southeast Michigan.

Thank you for your consideration.

KWAME M. KILPATRICK, MAYOR
CITY OF DETROIT
EXECUTIVE OFFICE

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVE., SUITE 1126
DETROIT, MICHIGAN 48226
PHONE 313•224•3400
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October 12, 2005

The Honorable State Senator Laura Toy
Chair, Senate Local, Urban and State Affairs Committee
520 Edmon Building
Lansing, MI 48933

Dear Senator Toy:

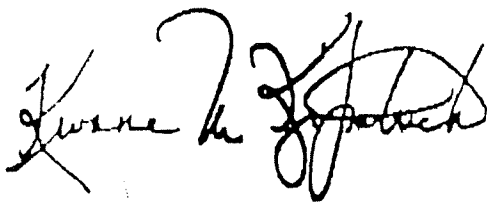
Please be advised that the City of Detroit opposes Senate Bill 372, legislation to "establish an authority to provide oversight and control" of the Detroit Water and Sewerage Department.

The measure represents yet another unnecessary intrusion on local control and blatant attack on the home-rule powers of cities by the Michigan Legislature. It, therefore, is flawed public policy that should be abandoned in your committee.

I am incredulous as to why the Michigan Legislature is holding a hearing on Senate Bill 372, since Governor Granholm vetoed similar legislation a mere two years ago. Since then, numerous efforts have been made, too, to promote regional cooperation on Detroit Water and Sewerage Department operations, including ratemaking. Indeed, those efforts earlier this year resulted in the lowest water rate increase (3.9 percent) in years.

Thus, what is the point of Senate Bill 372? Again, the City of Detroit opposes this divisive legislation and respectfully asks that you not move it.

Sincerely,



Kwame M. Kilpatrick
Mayor

Cc: Senator Patty Birkholz
Senator Mike Goschka
Senator Raymond Basham
Senator Virgil Bernero

City of Detroit
CITY COUNCIL

October 12, 2005

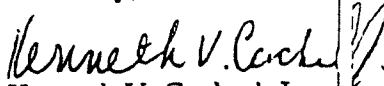
Governor Jennifer M. Granholm
State of Michigan
George W. Romney, 2nd Fl
111 S. Capitol Ave.
Lansing, Michigan 48909
Via Facsimile

RE: Senate Bill 372 and House Bill 4546

Dear Governor Granholm:

On April 27, 2005, the Honorable Detroit City Council unanimously adopted a Resolution in opposition to proposed legislation that would create a regional governance authority and divest the City of Detroit of its jurisdiction and control over the Detroit Water and Sewerage System. A copy of the Detroit City Council Resolution in OPPOSITION to Senate Bill 372 and House Bill 4546 is attached for your review.

Sincerely,


Kenneth V. Cockrel, Jr.
Council President Pro Tem

Enclosure

cc: The Honorable Detroit City Council
The Honorable Kwame M. Kilpatrick
The Michigan State House
The Michigan State Senate
Ms. Laura Toy, Chair, Senate Committee on Local, Urban and State Affairs
The Board of Water Commissioners
Mr. Kenneth Cole

Adopted as follows:
Yeas — Council Members Bates, K. Cockrel, Jr., S. Cockrel, Collins, McPhail, Tinsley-Talabi, Watson, and President Mahaffey — 8.
Nays — None.

**RESOLUTION IN OPPOSITION OF
HOUSE BILL 4546 AND
SENATE BILL 372**

By COUNCIL MEMBER COLLINS and
Joined By ALL COUNCIL MEMBERS

WHEREAS, The Detroit Water and Sewerage Department (DWSD), the third largest water and sewer utility in the United States, has a rich history in public utility service dating back to the early 1800s beginning with a water system of wooden logs and the "Grand Sewer" made up of brick and stone; and

WHEREAS, Today, DWSD provides water service to approximately one million people in Detroit and three million people in neighboring southeastern Michigan communities throughout Wayne, Oakland, Macomb, St. Clair, Lapeer, Genesee, Washtenaw and Monroe counties. The 1,071-square mile water service area, which includes Detroit and 125 suburban communities, makes up approximately 43 percent of the state's population. The Department also provides wastewater service to approximately one million Detroit residents and two million suburban residents in neighboring communities. Wastewater service is provided to a 948-square-mile area that encompasses 36 percent of Michigan's population and includes the City of Detroit and 76 neighboring communities; and

WHEREAS, The Detroit Water and Sewerage Department is a branch of the City of Detroit government. The Department is governed by a seven-member Board of Water Commissioners whose members are appointed by the Mayor. Four commissioners, by City Charter requirements, represent Detroit residents. Three remaining commissioners represent suburban wholesale customers with appointees from Wayne, Oakland and Macomb counties; and

WHEREAS, DWSD's water supply system is one of the largest in the nation both in terms of water produced and population served. The water system draws fresh water from the Great Lakes System, with Lake Huron to the north and the Detroit River to the south. DWSD's water network consists of 3,400 miles of transmission and distribution mains within the City of Detroit, and 402 miles of distribution mains in the remaining service area. DWSD's five water treatment plants pump an average of 659 million gallons of clean drinking water each day; and

WHEREAS, DWSD's sewer system originated in 1836, and today consists of 14 pump stations, three storm water

detention basins and a total of 3,400 miles of sewer lines that carry rainwater and wastewater to the Wastewater Treatment Plant, the largest single-site wastewater treatment facility in the country. This facility treats an average of 660 million gallons of flow per day; and

WHEREAS, Based on the rates adopted for Fiscal Year 2004/2005, DWSD began billing customers in the City of Detroit an average of \$44.67 per month in August, 2004 — which includes all costs of providing safe drinking water and sewer service to their homes, including the cost of water and wastewater treatment, pumping, delivery, billing, etc. and more; and

WHEREAS, Suburban customers receive the same high quality drinking water and wastewater treatment provided to Detroit customers. However, their municipalities operate additional facilities to bring these services to their residents' homes, so DWSD's current charges of \$20.42 per month for the average suburban customer, represent only a portion of the final bill for residents outside the city; and

WHEREAS, DWSD's current Capital Improvement Program totals \$2.4 billion over the next five years with \$534 million budgeted for water and sewer projects for FY 2004/2005. The program focuses on maintaining the excellent quality of water provided to all consumers; improving water system reliability by replacing aging infrastructure to reduce the growing incidence of main breaks; ensuring environmental protection for all Metropolitan Detroit residents through upgraded treatment facilities; improving employee safety through system modifications; and increasing efficiency of services to all customers by taking advantage of new technology; and

WHEREAS, Major projects in the Capital Improvement Program include replacement of aging water mains; Department-wide instrumentation and systems upgrades to 52 water and wastewater facilities; implementation of program management at the Wastewater Treatment Plant for continued regulatory compliance through rehabilitation and upgrades; and construction of additional combined sewer overflow facilities to ensure that area sewer systems effectively handle storm water flows and protect the environment; and

WHEREAS, The Michigan State House is considering proposed legislation, H.B. No. 4546, introduced by Rep. Shelly Taub, and S.B. 372 both of which seek to establish a regional water and sewer district and changes the composition of the Board of Water Commissioners; and

NOW THEREFORE BE IT RESOLVED, That the Detroit City Council urges the Governor of the State of Michigan and the Michigan State House and Senate to

reject House Bill No. 4546, and Senate Bill 372 which are unnecessary and burdensome to the water and sewerage system, which effectively serves approximately 4 million residents of Southeastern Michigan; and

BE IT FINALLY RESOLVED, That the City Clerk be instructed to send copies of this adopted resolution to the Honorable Governor Jennifer M. Granholm, the Honorable Kwame M. Kilpatrick, the entire Michigan State House and Senate, the Board of Water Commissioners, and Marge Markey, the City of Detroit's State lobbyist.

Adopted as follows:

Yeas — Council Members Bates, K. Cockrel, Jr., S. Cockrel, Collins, McPhail, Tinsley-Talabi, Watson, and President Mahaffey — 8.

Nays — None.



Michigan House of Representatives

Detroit Caucus

"One City, One Voice"

P.O. Box 30014 – Lansing, Michigan 48909 – (517) 373-0144

February 1, 2006

Officers

Rep. Bill C. McConico
Chairperson

Rep. Morris W. Hood III
Vice Chairperson

Rep. Marsha G. Cheeks
Secretary

Rep. Steve Tobocman
Policy Chair

Members of the Local Government and Urban Policy Committee
Representative John Stakoe, Chair
893 House Office Building
Lansing, MI 48933

Dear Committee Members:

Please be advised that the Detroit Caucus of the Michigan House of Representatives, for a multiple of reasons, opposes House Bill 4546 – legislation compelling the Detroit Water and Sewerage Department to be “incorporated as a regional water and sewer district.”

Members

Rep. George Cushingberry Jr.
Rep. Tupac Hunter
Rep. Gabe Leland
Rep. LaMar Lemmons III
Rep. LaMar Lemmons Jr.
Rep. Virgil Smith
Rep. Mary Waters
Rep. Edward Gaffney Jr.

Socially, this ill conceived measure – *much like Senate Bill 372, which seeks to enact similarly flawed policy into law* – promotes politics of division ahead of regional cooperation. This, at a time when the City of Detroit and her suburbs need most to work in the spirit of collegiality to attract prospective investors to Southeast Michigan, is simply wrong.

Policy-wise, House Bill 4546 is an affront to local control. Specifically, the bill seeks to vest the powers of the prospective water and sewer district with a “metropolitan area” board of trustees that could compromise as many as 19 members from eight different counties and the City of Detroit, with only three (3) being residents of the City of Detroit. While the City of Detroit would “retain ownership” of the system under House Bill 4546, this board of trustees “may fix rates and other charges” for water and sewer services.

The Charter of the City of Detroit, however, expressly empowers the Board of Water Commissioners with oversight and control of the Detroit Water and Sewerage Department, including “(establishment) of equitable rates to be paid” by consumers of the system. The Charter also prescribes that the Mayor of the City of Detroit shall appoint seven (7) members to the Board of Water Commissioners and that at least four (4) of the board members “must be residents of Detroit.”

Legally, House Bill 4546 is unconstitutional. No less an authority than U.S. District Judge John Feikens, in a January 5, 2006, order and opinion denying a suburban request to remove the Mayor of the City of Detroit as Special Administrator for the Detroit Water and Sewerage Department, wrote: "*The City of Detroit owns the water and sewer system*" ... "*the Michigan Constitution's clear statement (is) that ownership and control of the system belongs with the City of Detroit*" ... and, finally, "*Any decision to allow suburban leaders a measure of control over the Detroit Water and Sewerage Department requires me to use federal power to permit what state law forbids.*"

Make no mistake: House Bill 4546 is misguided public policy. Please vote "No" on this legislation.

Sincerely,



Representative Bill McConico, Chair
District 5



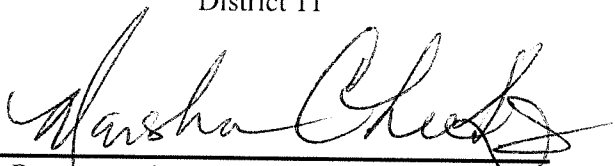
Representative Gabe Leland, Member
District 10



Representative Morris Hood, Vice Chair
District 11



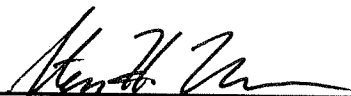
Representative LaMar Lemmons, III, Member
District 3



Representative Marsha Cheeks, Secretary
District 6



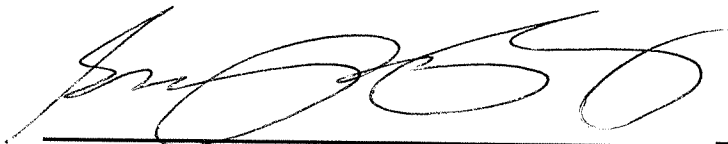
Representative LaMar Lemmons, Jr., Member
District 2



Representative Steve Tobocman, Policy Advisor
District 12



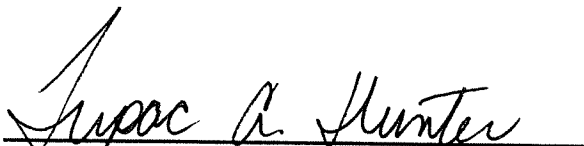
Representative Virgil Smith, Member
District 7



Representative George Cushingberry, Member
District 8



Representative Mary Waters, Member
District 4



Representative Tupac Hunter, Member
District 9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
JAN - 5 2006
CLERK'S OFFICE
DETROIT

UNITED STATES OF AMERICA,
Plaintiff and Counter-Defendant,

vs.

Civil Action No. 77-71100
Honorable John Feikens

STATE OF MICHIGAN,

Defendant and Cross-Plaintiff
And Cross-Defendant,

vs.

CITY OF DETROIT, a municipal corporation, and
DETROIT WATER AND SEWERAGE DEPARTMENT,

Defendant and Cross-Plaintiff,

vs.

ALL COMMUNITIES AND AGENCIES UNDER
CONTRACT WITH THE CITY OF DETROIT FOR
SEWAGE TREATMENT SERVICES,

et al.

**OPINION AND ORDER DENYING OAKLAND COUNTY'S MOTION TO REPLACE
DWSD'S COURT APPOINTED SPECIAL ADMINISTRATOR FOR LACK OF
JUSTICIABILITY**

On September 26, 2005, Oakland County filed its Motion to Replace the Detroit Water and Sewerage Department's (DWSD's) Court-Appointed Special Administrator, Mayor Kwame Kilpatrick, with a Joint Management Committee. I GRANT the motions by Macomb County, Oakland County, and the City of Detroit to exceed our normal page limits for briefs, responses, and replies, and I accept the City of Warren's amicus brief. No other party – of whom there are dozens – nor any other individual has submitted anything to this Court regarding this motion.

Because of the relatively small interest the vast majority of the parties appear to have in this matter, as well as the extensive briefing by the few parties that do seem concerned, an oral hearing on this motion would not be useful. Local Rule 7.1(e)(2).

Of paramount importance to my analysis of the motion, I point out that there are two cardinal laws central to the dispute between the Detroit Water and Sewerage Department (DWSD), the United States, the State of Michigan, and all communities in south-eastern Michigan¹ to which DWSD provides water and from which waste-water is removed: a federal statute, the Clean Water Act of 1972, and Article 7 of the Michigan Constitution, adopted in 1961.

The Clean Water Act requires sweeping changes in the ways wastewater is collected and treated, which dramatically affects the quality of water. It also requires that complex permits be obtained from the federal Environmental Protection Agency (the EPA) controlling the ways in which the goals of the statute would be met. In 1977, when the EPA began its enforcement action against the State of Michigan, the City of Detroit, and DWSD, I became aware of my need to determine how the Clean Water Act impacted the state Constitution's provisions regarding cities in both owning and operating water and sewer treatment systems. Those two laws remain essentially the same today, as do the conflicts between the parties, and I keep this overlying framework in mind when analyzing these disputes.

I note that all those who have made submissions to this Court implicitly recognize my power to entrust to anyone of my choosing the office of Special Administrator. As discussed below, a review of the facts indicates that under Mayor Kilpatrick's Special Administratorship,

¹The case was assigned to my docket and I added all communities under contract with DWSD for sewerage services.

DWSD's compliance has improved dramatically, such that the position of Special Administrator (which is akin to a receiver) is not necessary at this time. Therefore, because I am ending the position of Special Administrator for the present time, I DENY the motion to replace Mayor Kilpatrick as Special Administrator for mootness. As for the remaining requested relief, I DENY the motion because the requests for relief are not ripe.

FINDINGS OF FACT

I. History of the Consent Judgments and Special Administratorship

In 1977, the parties to this case entered into a Consent Judgment, but less than a year later, it became clear that compliance would not be achieved easily or quickly. In 1979, I created the position of Special Administrator, because I found that compliance with the Consent Judgment the parties had negotiated, required the exercise of this court's equitable powers. (Opinion of March 21, 1979, Case No. 77-71100, slip op. at 8.)

On March 21, 1979, I selected the Mayor of Detroit to be Special Administrator, stating as my reason for selecting him is that when exercising the federal government's power under the U.S. Constitution to override a State's or City's choices regarding its governance, the doctrine of the separation of powers meant that "great care must be taken to reach a balance that does not summarily deny to such local government the full exercise of its authority over its affairs." (Opinion of March 21, 1979, Case No. 77-71100, slip op. at 8.)

Shortly thereafter, the first amendment to the Consent Judgment was signed, and DWSD operated under it for several years. During those years, I sometimes temporarily suspended the Special Administratorship. When compliance with the Clean Water Act or the Consent Judgments in this case was at risk, however, I have revived the Special Administratorship and again given the Mayor of Detroit the power to swiftly take the necessary actions to achieve

compliance. No party has ever objected to my decision to create or suspend the post based on the record of compliance, nor does the current motion challenge that rationale.

II. Facts Regarding Municipal Government Structure and the Michigan Constitution

The City of Detroit owns the water and sewer system which it operates through DWSD, and thus provides water and sewerage services to its inhabitants. DWSD sells and delivers water and provides sewage disposal services outside of its corporate limits to a large number of willing buyers now numbering nearly four million inhabitants outside the City of Detroit..

The State of Michigan's Constitution, Article 7, §24 reads: "Subject to this constitution, any city or village may acquire, own or operate, within or without its corporate limits, public service facility for supplying [...] water [and] sewage disposal [...] to the municipality and the inhabitants thereof." It continues: "Any city [...] may sell and deliver water and provide sewage disposal services outside of its corporate limits in such amount as may be determined by the legislative body of the city or village[.]" *Id.* (emphasis mine.) The State of Michigan's Constitution, Article 7, §34 reads: "provisions of this constitution and law concerning [...] cities [...] shall be liberally construed in their favor."

III. History of the Kilpatrick Special Administratorship

In 1998, the State of Michigan, in tandem with the EPA, issued a notice of violations of DWSD's permit to operate the sewage plant (permit no MI 0022802). (Sec Order of Feb 7, 2000, case no. 77-71100, slip op. at 2.) At that time, I appointed a committee to investigate why, after so many years of court oversight, the plant was not able to remain in compliance with federal law and state law. *Id.* In January of 2000, the committee issued a report, which found that many causes of that non-compliance existed for at least three years. *Id.* Some short term, unsustainable measures were taken to bring the plant into technical compliance, but it was clear

to me that once again, a Special Administrator, vested with the equitable powers of the federal court, would be necessary to bring DWSD into long term compliance. *Id.* at 3.

When Mayor Kilpatrick came into office, I named him Special Administrator. In two key actions, Mayor Kilpatrick, acting as Special Administrator, ordered both the hiring of Victor Mercado as DWSD's director, and the Infrastructure Management Group, a national corporation based in Maryland, as consultant to DWSD.

IV. Key Performance Measures During Kilpatrick's Special Administratorship

A. Performance of Director of DWSD

The Wastewater Treatment Plant has not violated its National Pollution Discharge Elimination System (NPDES) permit during Mercado's tenure. I attach hereto and make a part hereof a letter from Phil Argiroff, P.E., Supervisor of Public Wastewater & Drinking Water Unit, Water Bureau, Southeast Michigan District Office, as an Appendix to this Opinion. It speaks for itself. Construction work and other projects required to comply with federal and state law has proceeded largely on schedule. Update to DWSD's Plan for Long-Term Measures to Ensure Compliance with Permit Requirements, Nov. 1, 2005. When difficulties have arisen, Mercado has promptly alerted this Court to any potential problems and reported on his efforts to solve those problems in regular oversight meetings. The formal reports required by the Consent Judgment's have also been completed in a timely fashion. *Id.*

Mercado has cut DWSD's operating budget by approximately 10 percent without having a negative impact on compliance. Consequently, the increases in water rates during Mercado's tenure have been relatively small, especially in comparison to previous years. DWSD's water and sewerage rates are among the lowest in the nation despite the cost of many required improvements. The reduction in rate increases also has not impeded DWSD's current

compliance with federal and state law. Moreover, the reduction in rate increases has not impeded DWSD's ability to comply with federal and state law in the future, in that DWSD's bond ratings have remained good.

Mercado has proven himself capable of executing the necessary projects to comply with federal and state law while keeping costs low. The ability to keep costs low without jeopardizing DWSD's services is key to the long-term success of DWSD's compliance, because DWSD's difficulties in maintaining compliance with federal and state law has been exacerbated by the continuing controversies over rate increases resulting from heavy infrastructure requirements.

Mayor Kilpatrick has used his Special Administratorship to extend Mercado's contract through the end of 2006.

B. Infrastructure Management Group's Performance

Significantly, the Infrastructure Management Group (IMG) has assisted Mercado and this Court by providing evaluations of DWSD's contracts and noting opportunities for increased efficiency. Increased efficiency is key to the long-term success of DWSD's compliance, because it helps to ensure that the Consent Judgment's requirements are carried out speedily and at the lowest possible cost. IMG's recommendations have provided vital assistance to this Court in its oversight of compliance activities. For instance, its aid in preparing new template language for "model" contracts is a key step forward toward long-term compliance.

C. Progress Summary

Thus two key decisions by Mayor Kilpatrick, acting as Special Administrator, the hiring of Mercado and IMG have resulted in significant progress toward compliance with the Clean Water Act. There have been no permit violations, there has been good progress on the

construction of mandatory projects, and financially DWSD is in a position to continue compliance. Under Kilpatrick's leadership, DWSD is now making steady progress toward long-term compliance and the end of this Court's oversight.

V. Disputed Contracts

The motion also asks for relief regarding several contracts approved by Mayor Kilpatrick as Special Administrator, focusing most strongly on a contract for a regional communications system. All the contracts mentioned were the subject of press reports, which the motion cites. At the time the first press reports regarding these contracts were published, as part of my oversight, I asked this Court's Special Master, F. Thomas Lewand, to investigate each contract and make a report and recommendation to this Court. This investigation is nearly completed.

VI. The Consortium

The decision of the Rouge River communities in Southeast Michigan to create a forum that successfully handled disputes regarding water quality infrastructure and rates outside of the litigation process marked a turning point in their compliance. Because of its effect, namely, a new commitment to long-term, stable compliance with pollution laws, it paved the way for ending court oversight. United States, et al., v. Wayne County, et al., Order Approving Joint Motion to Terminate the Consent Decree, slip op. at 3 (E.D. Mich. Nov. 28, 2005).

Additionally, in 2001, I invited 40 civic and governmental leaders of Southeast Michigan to become a consortium to address water quality problems. See Order Defining the Role of the Southeast Michigan Consortium (case no. 77-71100), 261 F. Supp. 2d 906, 910 (E.D. Mich. 2003). Participation in the Consortium or in any solution it recommends is entirely voluntary. See United States, et al. v. Wayne County, et al., 280 F. Supp. 2d 726, 728 (E.D. Mich. 2003). Leaders in the business community, the nonprofit community, and from local governments have

donated their time to the Consortium, and worked toward resolving disputes and made recommendations for measures that help achieve long-term compliance with the law. This Court is grateful for their extensive service and encouraged by the progress reported at meetings.

CONCLUSIONS OF LAW

I. Justiciability: Mootness and Ripeness

Even if no party raises issues of justiciability, this Court has a responsibility to examine whether the parties before it are raising a justiciable claim. North Carolina v. Rice, 404 U.S. 244, 245 (1971); Metropolitan Washington Airport Auth. v. Citizens for Abatement of Airport Noise, 501 U.S. 252, 265 n.13 (1991). To avoid dismissal for mootness, an "actual controversy" must be present, and a court must be able to provide a remedy. Preiser v. Newkirk, 422 U.S. 395, 401 (1975) (quoting Steffel v. Thompson, 415 U.S. 452, 459, n. 10 (1974)); Church of Scientology of CA v. United States, 506 U.S. 9, 12 (1992).

Courts must dismiss a case for lack of ripeness unless the Complaint regards an existing and substantial controversy, and not a hypothetical question or possibility of harm. Dixie Fuel Co. v. Comm'r of Social Security, 171 F.3d 1052, 1057 (6th Cir. 1999) (quoting City Communications Inc. v. City of Detroit, 888 F.2d 1081, 1089 (6th Cir. 1989)). In determining whether a claim is ripe, the Sixth Circuit has considered the following factors: "(1) the likelihood that the harm alleged will ever come to pass; (2) whether the factual record is sufficiently developed to allow for adjudication; and, (3) hardship to the parties if judicial review is denied." Norton v. Ashcroft, 298 F.3d 547, 554 (6th Cir. 2002) (citing Adult Video Ass'n v. US, 71 F.3d 563, 568 (6th Cir. 1995)). See also National Park Hospitality Assoc. v. Dept. of the Interior, 123 S.Ct. 2026, 2030 (2003); Abbott Laboratories v. Gardner, 387 U.S. 136, 149 (1967) (rev'd on other grounds, Califano v. Sanders, 430 U.S. 99, 105 (1977)).

II. Special Administrator

As a federal judge, I have a power denied to the Michigan legislature and other officers of Michigan's government: the power to override the Michigan Constitution and other state law. The Supremacy Clause of the U.S. Constitution allows me to do this when it is necessary to enforce federal law, which includes the Consent Judgment and its amendments. United States Const. art. VI, ¶ 2. The appointment of a special administrator with the ability to exercise those powers is appropriate when it is "a valid and reasonable means to ensure the dual goals of prompt, meaningful, and full compliance" with the current Consent Judgment and the goal of "extrication of the federal judiciary from the management of state governmental functions." Glover v. Johnson, 934 F.2d 703, 725 (6th Cir. 1991). The Sixth Circuit also teaches the need to ensure that there is "no less intrusive means of bringing about compliance" when appointing a special administrator. Id. at 714.

I have been concerned about the potential intrusiveness of creating a special administrator for DWSD, and thus, when exercising that equitable power, I have respected the principles of our federal system that emphasize the integrity retained by each State, and thus local, government and the respect owed to it by federal authorities. See, e.g., Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 41 (1994); Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993); City of Trenton v. New Jersey, 262 U.S. 182, 186 (1923) (municipalities are subdivisions of state; "within the limits prescribed by the state Constitution," power to own and operate waterworks is frequently conferred by states on municipalities). That doctrine requires me to give weight to the decision of the people of Michigan, expressed in the Michigan Constitution, about the structure and ownership of their government and the place of home rule within it.

The plain language of the Michigan Constitution vests the power to operate the Detroit Water and Sewerage Department, both within and outside City limits, with the City of Detroit. Mich. Const. Article VII, § 24. Even if there were any doubt about how to interpret Article 7, § 24, the Michigan Constitution instructs courts to construe that provision liberally in favor of the City of Detroit. Article 7, §34.²

In an attempt to balance the need for DWSD to comply with federal law and with the Michigan Constitution's clear statement that ownership and control of the system belongs with the City of Detroit, I chose to create the position of Special Administrator and place the Mayor of Detroit in that role. United States v. City of Detroit, et al., Case No. 77-71100, slip op. at 8 (E.D.Mich. March 21, 1979). The appointment of a Special Administrator is for the express power of allowing him to override the City's charter when necessary to effectuate speedy compliance.³

Any decision to allow suburban leaders a measure of control over the Detroit Water and Sewerage Department requires me to use federal power to permit what state law forbids. See U.S. Const. art VI 2. Such an exercise of power would show little respect for the choices of the people of Michigan, and would only be appropriate when the need for a Special Administrator is

² Read together, these provisions give definitive control of DWSD's operations to the City of Detroit. Even if the lack of court decisions interpreting this provision rendered this an unsettled question (which I do not believe it does given the plain language), and I had to predict how the state's highest court would rule, I can find no legal basis whatsoever for reading these provisions to do anything other than give exclusive control of DWSD operations to Detroit. Mills v. GAF Corp., 20 F.3d 678, 681 (6th Cir. 1994) (when state law is unsettled, a federal court must predict what the state's Supreme Court would rule).

³ Macomb asserts that the Special Administrator's power is limited by the terms of the Detroit City Charter, and in support of this position, cites the City Charter. (Br. in Supp. 20. ("Therefore, the powers of the Mayor, including those actions taken in his role as Special Administrator, are limited by the terms of the Detroit City Charter.")) This assertion is in error. A federal court does not rely on state law for its powers; on the contrary, the United States Constitution allows the federal government to override state law when necessary to effectuate compliance with federal law. E.g., BFP v. Resolution Trust Corp., 511 U.S. 531, 546 (1994). Thus, the legality of actions taken by this Court's Special Administrator depends solely on congruence with federal, not state or municipal, law.

acute and the probable outcome of such an appointment significantly speeds compliance with federal and state water and anti-pollution laws.

Here the facts show a rapid improvement in the operation of DWSD such that the Department is successfully completing or attempting to complete its responsibilities under the Consent Judgments, and, although more work remains, is well on its way to achieving compliance with the Clean Water Act. I find that compliance with federal law no longer regularly requires urgent action. Therefore, I TERMINATE the Special Administratorship, because it is not needed at the present time. As the termination of the Special Administratorship renders the controversy over who this Court selects to fill that role moot, I DENY the motion.

I note that nothing in this Opinion and Order prevents the Mayor of Detroit from requesting that this Court again exercise its own equitable powers, should an urgent situation arise that requires the override of the Cities' charter to effectuate compliance with the Consent Judgment.

II. Disputed Contracts

Much of the requested relief in the motion deals with contracts that this Court's Special Master is in the process of investigating. The City of Warren and Macomb County have emphasized the need for an evaluator independent of the City to examine those contracts. (City of Warren's Resp., 4; Macomb County Br. in Resp., 2.)

The Special Master is independent of the City, and is in the process of researching and preparing a report for the Court on the contracts at issue. The wide-ranging and at times unspecific briefs indicate that all parties and this Court would benefit from having a clear report and recommendation from the Special Master regarding these contracts. Any specific points that

might remain could then be brought at that time in the normal procedure, i.e., in the form of objections to the Special Master's Report and Recommendation.

In other words, consideration of these issues would greatly benefit from the additional factual development by the Special Master that is underway. The look-back procedure can be used to address any overcharging of the rates, and therefore, there is little hardship to the parties of delaying action until the Special Master can make his reports and recommendations and this Court can act on them. Therefore, because further factual development is needed and the look-back procedure can remedy any hardship, I find the remaining issues in the motion are insufficiently ripe, and DISMISS those claims for lack of justiciability.

III. Southeast Michigan Consortium for Water Quality

DWSD's long-term compliance with federal law would be better assured if the water quality leaders of this region could develop a process for working out difficulties between DWSD and its customers outside of the litigation process. Although the State Constitution places the right to own and operate the system solely in the hands of the City, the City voluntarily agreed to participate in the Consortium, as did a wide variety of other leaders, including those who represent DWSD's largest customers. I have encouraged this venue for customer participation in hopes that this forum would accustom all the region's leaders to working together to achieve compliance with pollution laws.

None of the dozens of parties nor the amicus assert a lack of progress by the Consortium, other than the movant. My own observations convince me that the Consortium has made progress on key issues. That noted, I will not continue to ask talented leaders in our region to devote their energies to the Consortium unless there is optimism that this is a venue in which further progress can be made. To that end, I request that Timothy O'Brien, the Consortium's

working chairman, and either Charles Hersey or Paul Tait, SEMCOG's officers, who have provided key staff support to the Consortium, report to me on their views of the progress that has been made thus far and what issues remain to be addressed.

CONCLUSION

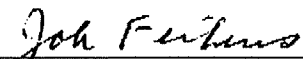
DWSD's record of compliance has improved markedly in the last few years. This means that no Special Administratorship is necessary at the present time. Because no Special Administratorship is presently in existence, the motion to replace the Special Administrator is therefore moot and must be DENIED. The portions of the motion regarding various contracts are not ripe, and must be DENIED. **IT IS SO ORDERED.**

Finally, I look at the long running series of disputes between the City and its customers in their broad historical and legal context. The City of Detroit facilitated the growth of this region when it expanded its sewer and water systems far beyond the bounds of the City at the same time that the Eisenhower administration in the 1950's began building our interstate highways in Michigan.

Now, a half century later, Detroit through the Detroit Water and Sewerage System has built a substantial regional complex which each day and night provides high-quality water to and removes waste water from the homes and industries of over four and one-half million people.

Now, DWSD's system, vital as it is to the health and quality of life in southeastern Michigan, has faced repeated challenges from some suburban communities who are prevented by the state's constitution from having any say in the ownership or operation of DWSD. At the same time, the people of Detroit who provide this valuable service are barred by state law from receiving any financial benefit or profit for doing so. This tension underlies the disputes that continue to come before this court.

This dilemma will not be resolved by legislation or litigation. It demands cooperation on the part of the southeast Michigan communities and the agreement by DWSD to modify the protection given to it by the state's Constitution as a part of a regional settlement.



John Feikens
United States District Judge

Date: January 5, 2006



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHEAST MICHIGAN DISTRICT OFFICE



STEVEN E. CHESTER
DIRECTOR

December 22, 2005

Honorable John Feikens
United States District Court
Eastern District of Michigan
851 Federal Building
Detroit, Michigan 48226

Dear Judge Feikens:

Last year, we offered a brief statement about the construction projects at the Detroit Wastewater Treatment Plant (WWTP) established as essential projects under Section II.D.6 of the Second Amended Consent Judgment (SACJ). The purpose of this letter is to offer an updated statement through 2005. The SACJ required that the Detroit Water & Sewerage Department (DWSD) submit a comprehensive plan for long-term measures to ensure compliance with NPDES permit requirements (Section II.D.3). DWSD's comprehensive plan included the WWTP Program Management contract (PC-744). Under this contract, DWSD conducted detailed needs assessments of the WWTP's primary treatment, secondary treatment, and solids handling facilities, followed by development of needed WWTP improvement projects.

The WWTP Program Management contract resulted in 42 project definition statements. Of these, our office determined that 13 projects were "essential projects" needed to assure compliance at the WWTP. In addition, two projects were combined to form one new project. We have continued to meet routinely with Ms. Louise Lieberman, DWSD, and PC-744 Program Management staff during 2005 to discuss the status of these projects. At this time, construction has been completed for five projects, and the rest of the projects are under construction and on schedule. A detailed list of these essential projects is included as Appendix B2 to DWSD Comprehensive Plan Update, dated October 27, 2005.

In our opinion, the "essential projects" that have been completed or will be completed by the middle of 2006, should significantly help the WWTP ensure long-term compliance with NPDES requirements. We believe that the Court's inclusion of these requirements in the SACJ was most insightful and helpful, and that DWSD's implementation of the WWTP Program Management contract (PC-744) continues to be very effective.



Honorable John Feikens
December 22, 2005
Page 2

If you have any questions, please contact me at 586-753-3760.

Sincerely,



Phil Argiroff, P.E., Supervisor
Public Wastewater & Drinking Water Unit
Water Bureau
Southeast Michigan District Office

cc: Dr. Jonathan Bulkley, Federal Court Monitor
Mr. Gary Fujita, DWSD
Ms. Louise Lieberman, DWSD
Ms. Pam Stevenson, DAG
Mr. Pete Ostlund, DEQ-WB
Ms. Laura Verona, DEQ-WB
Ms. Jodi Peace, DEQ-WB
Ms. Jodie Taylor, DEQ-WB

Sewerage Politics

End the city-bashing over Water Dept.

February 12, 2006

Suburban voters ought to call their lawmakers out for grandstanding. When these representatives and senators in Lansing repeatedly go after control of Detroit's water and sewerage systems, they're purely bucking for attention and votes -- in one of the most divisive ways possible.

Surely they have better things to do than head down this dead end again and hyperventilate with phrases like "taxation without representation." In exchange for paying water and sewer bills, after all, everyone gets good quality water and working toilets. These days, some households probably pay more for bottled water than it costs to have an equally good product piped right into their homes.

The legislators pushing a new version of control over the Detroit system know they're headed for a veto from Gov. Jennifer Granholm. She nixed a similar measure when it became the first bill to land on her desk back in 2003. That makes the issue good only for either trying to beat up on the Democratic governor in the suburbs, which will be one Republican goal come November, or for lawmakers trying to boost their own name recognition before the August primary or the November general election.

The man who really is behind the curtain -- U.S. District Judge John Feikens, who retains ultimate authority over the system -- continues on his own track to try to resolve the seemingly eternal tension between the city and suburbs. At his request, a group of high-powered business executives is looking at long-term strategies that might defuse it.

Any solution, if one can be found, will involve politics. But Feikens believes local elected officials will need substantial help from the business and financial community to make any major change workable. A jointly owned system, for example, would require the suburbs to come up with billions of dollars to purchase their shares, and the cash-strapped city would have to take seriously any offer along those lines. Converting the system to a utility overseen by the state Public Service Commission might be another option -- or, if it's considered, might actually drive the locals to cooperate.

In his role, Feikens deals with specific complaints about Detroit's management of the system. He has seen sufficient progress to end the appointment of a special administrator, a role filled by Detroit's mayor over succeeding administrations. But he still has one of his special masters, attorney F. Thomas Lewand, checking into inquiries brought by Oakland County Drain Commissioner John McCulloch over how the city handled charges for its new radio system and other matters. Customers, inside or outside of Detroit, could do worse than having this level of investigation on their behalf.

Ultimately, as Feikens made clear in his most recent ruling, Detroit and its customer communities must fashion their own plan for getting along. "This dilemma will not be resolved by legislation or litigation," he wrote. Mindful of that, voters should ask their proxies in Lansing to tone down the Detroit-bashing.

BRIAN DICKERSON: XL spirit gives way to small-minded Senate

BY BRIAN DICKERSON
FREE PRESS COLUMNIST

February 8, 2006

It took just 36 hours for Michigan's Republican-controlled state Senate to shake off its Super Bowl euphoria and get back to doing what it does best: driving a wedge between Detroit and its suburbs.

The vehicle was a bill by state Sen. Laura Toy, R-Livonia, seeking to establish a new, suburb-dominated authority to oversee the Detroit Water and Sewerage Department, the city-owned utility that serves about 4.6 million ratepayers throughout southeast Michigan.

Control of the water system has long been a sensitive point of contention between Detroit and its suburbs. Suburban politicians agitate for a bigger operational role while their Detroit counterparts warn against a school board-style state takeover.

Last month, U.S. District Judge John Feikens, who has supervised the water system's compliance with federal antipollution laws for nearly three decades, made an earnest effort to turn down the heat.

Judge's plea falls on deaf ears

In a ruling denying Oakland County's request for appointment of an oversight committee weighted in favor of suburban customers, Feikens warned that any legislative takeover would likely violate the state constitution. He urged the parties to explore arrangements under which Detroit's suburban customers could purchase equity in the department, in exchange for a greater voice in its operation.

The tension between the city and its water customers "will not be solved by legislation or litigation," the judge wrote. "It demands cooperation on the part of the southeast Michigan communities, and the agreement by the DWSD to modify the protection given to it by the state's constitution."

SB 372, which passed Tuesday on a party-line vote with only Warren Democrat Dennis Olshove joining the Republican majority, attempts to impose the same suburb-heavy oversight board Feikens rejected last month. Although its language was altered, Toy's initiative is essentially the sort of unilateral, strong-arm approach the court warned against. It seems likelier to exacerbate tensions than to provide a viable framework for resolving disputes over water rates.

Posturing doomed to fail

"It's not an approach we support," Gov. Jennifer Granholm's spokeswoman Liz Boyd said Tuesday, noting that Granholm vetoed similar legislation last year. "We'd prefer that lawmakers concentrate on issues on which there is more bipartisan agreement."

The Senate's persistence in the face of Feikens' warnings and a likely gubernatorial veto suggests that Republicans are more interested in illuminating the fault lines in regional governance than in overcoming them. It's the opposite of the can-do attitude that made Super Bowl XL a success.

Backers of Toy's initiative should keep in mind that taxes aren't the only factors that make entrepreneurs think twice about investing in Michigan. A state Legislature more interested in posturing than problem solving can be an equally effective repellant.

Contact **BRIAN DICKERSON** at 248-351-3697 or dicker@freepress.com.

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The Detroit News

Founded August 23, 1873

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A GANNETT NEWSPAPER PUBLISHED
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EDITORIALS

Suburban water rates go up but still a relatively good deal

Proposed second water supply system not needed

Water rate increases hit Metro Detroit suburbs this month but they're no reason to support the call for an independent suburban water department.

The idea of a second system gets new life from time to time. But it would not be cost effective as an alternative to the Detroit Water and Sewerage Department, which serves most of the region.

Over the years, a lot of the howling should be blamed — not from the wholesale rates charged by Detroit — but from additional hikes also added by many suburbs. In short, many suburban officials try to have it both ways. They blame the city for the raising cost of water while piling on their own special fees.

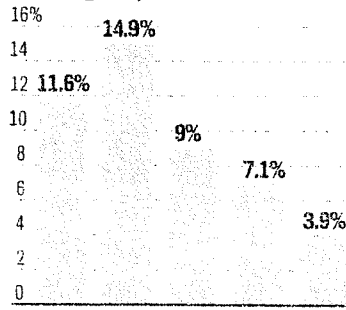
These disputes are decades old and won't be settled with the current round of complaints.

Suburban residents with complaints should short out who charges what on their water bill, and take the matter up at the next election of local officials.

Meanwhile the idea of a separate suburban water system has gained some spurious currency as a cure

Water rates

Average annual wholesale water rate changes from the Detroit Water and Sewerage Department.



Source: Detroit Water and Sewerage Department
The Detroit News

for higher water rates. One plan, for example, called for pumping water out of Lake Huron west to Genesee County and then south to Oakland County and the rest of the Metro area.

But that and other plans would cost billions to construct. And the need has not been established.

The Detroit water system's combined wholesale water and sewer treatment rates are still a relative bargain compared with those in most other major cities, according to comparative analyses. Still, those rates may have to go up in the future to deal with needed improvements, especially since the water system is under the supervision

of a federal court.

Those who propose a second water system say it's a matter of security in case one supply is sabotaged.

It's a point that wrongly assumes terrorists can't attack two places at one.

For now, conserving water and improving the existing system appears to be the best policy for meeting the region's water needs

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Cooperative spirit the key to DWSD's future

Earlier this month, U.S. District Court Judge John Feikens sent a clear message to suburban leaders who have tried to wrest away control of the Detroit Water and Sewerage Department (DWSD) from the city of Detroit. It's not going to happen, he ruled. Neither through legislation, nor litigation.

Feikens referenced state law when he ruled that only Detroit can own and operate the DWSD, which serves 4.5 million people and is the third largest water department in the country.

In September, Oakland County Drain Commissioner John McCulloch filed a motion in federal court to have Kwame Kilpatrick stripped of his duties as special administrator over the DWSD, and replaced by a five-member joint management committee composed of the drain commissioners from Oakland, Macomb and Genesee counties, as well as the director of the Wayne County Department of Environment and the mayor of Detroit.

In recent months there have been calls from both suburban leaders and Kilpatrick that the region needs to mend fences and quell the hostility that has existed between the city and its suburbs. The water issue offers an excellent opportunity to put some of that new cooperative spirit into practice. Lawmakers on both sides should lay down the swords and make sure the DWSD continues to provide some of the best water service in the country.

Originally published January 26, 2006

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in breaks. WAYNE 2B

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Wayne County 2B
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Kilpatrick out as water chief

■ But federal judge rejects criticism of mayor as system administrator, says bickering should end.

BY DAVID SHEPARDSON
AND JOHN WISELY
The Detroit News

DETROIT — A federal judge Thursday stripped Mayor Kwame Kilpatrick of his special administrator role over the Detroit Water

and Sewerage Department, but rejected a suburban request for a formal role in the governance of the nation's third largest water department.

U.S. District Judge John Feikens also rejected some county leaders'

criticism of Kilpatrick and praised the mayor's stewardship of the water department. Feikens said he hoped the city and suburbs could end more than a decade of bickering and he asked former Gov. William Milliken and James Nicholson, chief executive officer of PVS Chemicals, to help negotiate a

Please see Water, Page 6B



McCulloch



Feikens

"This dilemma will not be solved by legislation or litigation. It demands cooperation."

JOHN FEIKENS
U.S. district judge

Water

Continued from Page 1B

truce.
"The stars are in alignment to reach a deal," Feikens said in an interview.

Suburban leaders said they were glad to see the judge end the position of special administrator, which Kilpatrick used to bypass the Detroit Board of Water Commissioners and the City Council on some decisions.

Under the judge's ruling, Kilpatrick would have to work through the water commissioners and the City Council to seek approval for spending, hiring and awarding contracts.

But suburban leaders still insist they need a voice in governing the department that serves 4.5 million Metro Detroit customers.

Oakland County Drain Commissioner John McCulloch, who filed the motion, said he plans to meet with county lawyers next week to review it and decide what to do next. "At least we're back to some semblance of a check and balance," McCulloch said.

Detroit spokesman James Canaling said the city is reviewing the opinion and would have no immediate comment.

Feikens has overseen the water department since the 1970s as part of the settlement of a lawsuit over

the system's repeated violations of the federal Clean Water Act. In 1979, he appointed the Detroit mayor as special administrator to speed compliance with pollution standards.

Case demands cooperation

The legal moves are the latest fight in a battle between the city, which owns and operates the water system, and the suburbs, where three-quarters of the system's customers live. Many suburban critics contend Detroit mismanages the system while many Detroiters accuse the suburbs of trying to take over the system, which generated \$575 million in operating revenue last year.

"This dilemma will not be solved by legislation or litigation. It demands cooperation," Feikens wrote.

Feikens said Thursday in his 16-page opinion that he was ending Kilpatrick's role because the city "is well on its way to achieving compliance with the Clean Water Act" and that compliance "no longer regularly requires urgent action." That made the requests by the counties moot, Feikens ruled.

However, Kilpatrick could still ask Feikens to act "should an urgent situation arise that requires the override of the cities' charter."

Oakland County Executive L. Brooks Patterson called the removal of Kilpatrick as special adminis-

trator a good first step but said more needs to be done.

"We've still got a long way to go before there will be any suburban trust in the operation of Detroit Water and Sewerage Department," Patterson said.

As revealed by The Detroit News last year, Kilpatrick used his special administrator authority to bypass the water board and City Council on three controversial contracts:

■ A \$131 million radio system that will be used mostly by Detroit police and fire departments.

■ A \$21.3 million security upgrade performed by a company tied to the mayor's friend, Bobby Ferguson.

■ A \$38,000 no-bid public relations contract awarded to Bob Berg, the spokesman for Kilpatrick's re-election campaign.

Feikens didn't rule on whether the mayor abused his authority with those contracts. He referred them, instead, to a court-appointed special master, F. Thomas Lewand, "to investigate each contract and make a report and recommendation to this court. This investigation is nearly complete," Feikens wrote.

Lewand was out of the country and couldn't be reached.

You can reach David Shepardson at (313) 222-2028 or dshepardson@detnews.com.

Plea

Continued from Page 1B

ries founded, used kids as young as 9 years old to sell drugs, terrorized neighborhoods and frustrated police as late as 1987.

Jones lived in Oak Park and expanded his drug crews into Pontiac and Flint. By the time he went to federal prison in 1983, Jones estimated he had squirreled away several mil-

lion dollars, lost thousands in gambling, and had bought several houses and more than a dozen cars.

Jones used teens to sell drugs because they were difficult to prosecute and buffered leaders. The gang also gave top sellers cash bonuses and presents, such as fur trimmed leather coats that became extremely popular and known as Y.B.I. jackets. At its peak, Young Boys Inc. sold \$25,000 to \$30,000 a day per street corner.

After his release from federal prison in 1992, Jones moved to Pennsylvania and promised a life of honest work.

He and 13 others, including then-state Rep. Keith Stallworth, D-Detroit, were charged with conspiring to sell cocaine, heroin and marijuana. Stallworth later reached a plea deal with federal prosecutors. Federal prosecutors are still seeking the death penalty against two defendants.

DETROIT CODE

Sec. 7-1404. Limitations.

The following limitations shall apply relative to transportation:

1. The city may not sell or in any way dispose of any property needed to continue the operation of any city-owned public utility furnishing transportation service, unless approved by a majority of city voters voting on the question at a regular or special election.

2. The city may not grant any public utility franchise for transportation services which is not subject to revocation at the will of the city council unless the proposition is first approved by three-fifths (3/5) of city voters voting on the question at a regular or special election.

3. All contracts, franchises, grants, leases or other forms of transfer in violation of this section shall be void and of no effect against the city.

ARTICLE 7.

THE EXECUTIVE BRANCH: PROGRAMS, SERVICES and ACTIVITIES

CHAPTER 15. WATER and SEWERAGE

Sec. 7-1501. Department.

The water and sewerage department is headed by a seven (7) member board known as the board of water commissioners. The members of the board shall be appointed by and serve at the pleasure of the mayor. The term of membership on the board is four (4) years and not more than two (2) members' terms expire each year.

A member must be a citizen of the United States and a resident of Michigan. At least four (4) members of the board must be residents of Detroit.

The board shall appoint, with the approval of the mayor, a director and a deputy director for the department. The director and deputy director serve at the pleasure of the board.

Sec. 7-1502. Powers.

Under the direction of the board, the department shall supply water, drainage and sewerage services within and outside of the city.

The board shall periodically establish equitable rates to be paid:

1. By the owner or occupant of each house or building using water, drainage, or sewerage services; and

2. By any person, municipality, or public or private agency making a wholesale purchase of water, drainage or sewerage services from the city.

Unless otherwise provided by contract, the unpaid charges for water, drainage, and sewerage services, with interest, shall be a lien of the city upon the real property using or receiving them.

The board may make all necessary adjustments in the collection of water, drainage or sewerage charges.

The board may be given additional authority to establish rates by ordinance.

Upon the request of the mayor the board shall advise the various agencies of the city on matters involving water resource management.

Sec. 7-1503. Limitation on Funds.

All moneys paid into the city treasury from fees collected for water, drainage or sewerage services shall be

HOME RULE CHARTER

used exclusively for the payment of expenses incurred in the provision of these services, including the interest of principal of any obligations issued to finance the water supply and sewerage disposal facilities of the city, and shall be kept in separate funds.

Sec. 7-1504. Limitation on Sale of Assets.

The following limitations shall apply relative to water and sewerage:

1. The city shall not sell or in any way dispose of any property needed to continue the operation of any city-owned public utility furnishing water and sewerage service, unless approved by a majority of city voters voting on the question at a regular or special election.

2. The city shall not grant any public utility franchise for water and sewerage services which is not subject to revocation at the will of the city council unless the proposition is first approved by three-fifths (3/5) of city voters voting on the question at a regular or special election.

3. All contracts, franchises, grants, leases or other forms of transfer in violation of this section shall be void and of no effect against the city.

ARTICLE 7.

THE EXECUTIVE BRANCH: PROGRAMS, SERVICES and ACTIVITIES

CHAPTER 16. ZOOLOGICAL PARK

Sec. 7-1601. Department.

The zoological parks department is headed by the zoological director. The zoological parks department shall maintain and operate the city's zoological parks.

Sec. 7-1602. Commission.

The zoological parks commission shall advise the department on general program goals for the zoological parks. The zoological commission shall consist of five (5) members. The members of the commission shall be appointed by and serve at the pleasure of the mayor. The term of membership on the commission is four (4) years, and not more than two (2) members' terms expire each year.

ARTICLE 8.

PLANNING and FINANCIAL PROCEDURES

CHAPTER 1. PLANNING PROCEDURE

Sec. 8-101. Comprehensive Plan.

The mayor shall propose and the city council shall approve, with the modifications it deems necessary, a master plan of policies for the social, economic and physical development and conservation of the city ("plan" or "master plan").

Sec. 8-102. Periodic Review.

After approval of the plan, the mayor shall annually propose any amendments necessary to keep the plan current and the city council shall consider the mayor's proposed amendments and make the modifications in the plan that it deems necessary.

Sec. 8-103. Council Procedure.

The city council shall conclude its action on the plan annually by December 1. Interested persons and groups shall be given notice and an opportunity to be heard by either the city council, the city planning commission, or other committee of the city council, before approval of the plan or any amendments to the plan.